IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 7318 OF 2005

Vilas Vishnu Agate & Anr. ..Petitioners.

Versus

Shripad Seva Mandal ..Respondents.

Mr. R.R.Gyani with N.R.Gandhi for the Petitioners.

CORAM : S. A. BOBDE, J.
DATED : 24TH OCTOBER, 2005.

P.C.:

1. The petitioners have challenged the order passed below Exh.16 in Spl.Summary Suit No. 198/2004 by which the learned trial Court has granted leave to defend to the petitioners on depositing in the court an amount of Rs.6,83,743.95/- claimed by the respondents plaintiffs in the suit.

2. The learned counsel for the petitioners submitted that the petitioners/defendants have a strong arguable case. In fact according to the petitioners it is not even clear who is the actual plaintiff and the plaintiffs i.e. Shripad Seva Mandal and others are not entitled to claim any amount since according to the petitioners the amount is allegedly advanced by Shree Vamanraj Prakashan through Shirish

Shantaram Kawade, who represent the plaintiffs. According to the petitioners the amount has been paid by them to the respondents/ plaintiffs. This contention appears to have been strongly resisted by the respondents on the ground that the amount has been advanced by Shree Vamanraj Prakashan Sanstha which has amalgamated in Shripad Seva Mandal of which Shirish Shantaram Kawade is the President. This fact of merger was informed to the petitioners/ defendants. In fact the petitioners have paid interest of the fixed deposit to Shree Vamanraj Prakashan Sanstha till 30th June, 2000. Admittedly, according to the petitioners the amount was advanced by Shree Vamanraj Prakashan. However, the petitioners' dispute the merger of Shree Vamanraj Prakashan Sanstha with Shripad Seva Mandal and not the fact that they have received deposits from Shree Vamanraj Prakashan Sanstha.

3. The question of merger is a matter which could be decided at the trial. The trial court has upon considering the material placed before it come to the conclusion that even though the petitioners/defendants have raised a defence, in view of the admitted fact that the amounts of fixed deposit are with the defendants and even though triable issues are raised,

leave to defend should be granted on condition of depositing the amount claimed in the suit. The petitioner's defence does not inspire such confidence at this stage, that he ought to have been granted unconditional leave to defend. I see no material irregularity or perversity in the exercise of the jurisdiction by the trial court. In this view of the matter, the petition is dismissed.

4. Time to deposit is extended by a period of four weeks from today.

DT. 24.10.05 (S.A.BOBDE,J)

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